IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4828 of 2001
With
SPECIAL CIVIL APPLICATION No. 13557 of 1994
With
SPECIAL CIVIL APPLICATION No. 12244 of 2001
With
SPECIAL CIVIL APPLICATION No. 4654 of 2001
With
SPECIAL CIVIL APPLICATION No. 2136 of 1995
With
SPECIAL CIVIL APPLICATION No. 11390 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRANTIJ KELAVANI MANDAL - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

Special Civil Application No.4828/2001
MS KJ BRAHMBHATT for Petitioner(s) : 1,
MR MR MENDGEY, AGP for Respondent(s) : 1 – 3.

Special Civil Application No.12244/2001
MS MR VYAS for Petitioner(s) : 1,
MR MR MENDGEY, AGP for Respondent(s) : 1 – 3.

Special Civil Application No.4654/2001
MR JAYRAJ CHAUHAN for MR MM DESAI for Petitioner(s) : 1,
MR MR MENDGEY, AGP for Respondent(s) : 1,
RULE SERVED for Respondent (s) :2,
MR AD OZA for Respondent(s):3,

Special Civil Application No.2136/1995
MR DD VYAS for Petitioner(s) : 1,
MR MR MENDGEY, AGP for Respondent(s) : 1,
MR AD OZA for Respondent(s) :2,

Special Civil Application No.11390/2001
MR JAYRAJ CHAUHAN for MR MM DESAI for Petitioner(s) : 1,
MR MR MENDGEY, AGP for Respondent(s) : 1 – 3.

Special Civil Application No.13557/1994
NANAVATI & NANAVATI for Petitioner(s) : 1-2.
MR MR MENGDEY, AGP for Respondent(s) :1,
MR MR AD OZA for Respondent(s) :2.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 16/03/2007

ORAL JUDGMENT

1. In this group of petitions involving similar questions what is essentially under challenge is the formula evolved by the Gujarat Secondary and Higher Secondary Board for making selection for the appointment of teachers in Secondary and Higher Secondary Schools in the State of Gujarat to eliminate the possibility of favouritism and partiality and to provide uniform guidelines to rid selection of teachers in private aided schools of personal bias. The Board has been issuing circulars from time to time requiring the School authorities to confine to the selection process set out therein.

2. In Special Civil Application No.13557/1994, the School management had challenged the circular dated 25th November, 1994 issued by the Board laying down certain parameters for selection of

teachers. In the nutshell, it was provided that selection of qualified candidates may be made by Selection Committee on the basis of a total of 40 marks to be assigned under different heads such as qualifications, experience, higher or additional qualifications, etc. Circular also provided for a maximum of three marks to be assigned to a candidate for his general knowledge, general impression and personality. In essence therefore, the procedure evolved permitted discriminatory allotment of marks on the basis of performance of the candidates at the interview only to a limited extent of three out of a maximum of 40 marks to be assigned. It was primarily the grievance in the said petition that this methodology completely or at-least substantially snatched away the discretion of the members of the Selection Committee in selecting the most suitable candidate on the basis of his performance in the oral interview.

3. On the other hand, stand of the respondents and in particular, the Board was that to eliminate any possibility of favouritism and to provide for uniform yard stick for selection of suitable candidates, it was found necessary to eliminate the assessment on discretionary marks. It was contended that grant in aid schools receiving grant from the Government must confirm to such scrutiny and cannot enjoy a free hand in making selection and appointments of teachers.

4. Learned Single Judge of this Court by an order dated 23rd February, 1995, while admitting the petition passed the following order :

   "Rule. Operation of Annexure"B" dated 25-11-1994, is stayed. If any appointments are to be made in pursuance of the Resolution Annexure"B", that shall be subject to the final decision of the present Special Civil Application No.13557 of 1994. A specific reference may also be made in such orders of appointment with respect to the pendency of the present Special Civil Application."

5. It is not in dispute that after the said petition was admitted large number of appointments have been made in various teaching posts in Secondary and Higher Secondary Schools receiving grant on the basis of selection formula evolved by the Board.

6. The above methodology of selection has undergone some changes over a period of time. The State Government issued a fresh circular dated 5th December, 2000 and provided for somewhat different allocation of marks for selection of teachers in grant in aid schools. In this circular, there is no prescription of any marks for performance of the candidates in the oral interview. In other words selection is to be made solely on the basis of allotment of marks under different headings such as qualification, experience, etc.

7. Special Civil Application No.4828/2001 and other matters came to be filed by the School management seeking to annul the said Government Circular.

8. Learned Single Judge of this Court by an order dated 19th December, 2002 after taking note of the rival contentions made following observations :

> "6. Having heard the learned counsel for the parties for some time and having perused the syllabus for the B.Ed examination which also includes practical training and assessment of the practical work done by the candidate for the B.Ed. examination, the Court is prima-facie of the view that the allotment of marks to various examinations and assignment of marks in theory papers and in practicals may be given another look by the authorities as well as by the representatives of the school managements and also by the representatives of the Teachers' Associations. The candidates may be assigned marks out of total 100 marks so as to give proper weightage to all the relevant factors and in light of the syllabus for the B.Ed. and M.Ed. examinations.
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> It may also be considered that even if computation of marks may be made on objective basis by giving greater weightage to the marks at the B.Ed. examination, the management may still be given some discretion to award negative marks with onus on the management to justify why the candidate found to be most meritorious according to the formula prescribed, may not be appointed. In such cases, the management would have to justify non-appointment of the most meritorious of the available candidates and then the authority at the level of Joint Director or Director of Higher Education may look into the mater to decide whether such objection could be sustained or not.
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> 7. It will be open to the representatives of the school managements and also to the representative of the Teachers' Association to make all relevant suggestions in this behalf.
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> 8. Ms Brahmbhatt learned counsel for the petitioner in Special Civil Application No.4828 of 2001 states that the petitioner- management would like to bring on record further objections to the impugned Resolution and more particularly with a view to point out that the assessment of the practical work of the candidates at the B.Ed.

examination is not very objective and that, therefore, also more discretion is still required to be given to the management at the time of interviews.

The affidavit shall be filed by 24th December, 2002.

9. S.O. to 26th December, 2002. To be listed in the first Board along with Special Civil Applications Nos. 13557 of 1994 and 2136 of 1995."

9. One more development which needs to be noted is that subsequent to the circular dated 5th December, 2000, the opponents have once again issued a fresh circular dated 9th October, 2003 providing for fresh methodology for making selection of teachers in grant in aid schools. None of these petitions included challenge to the said circular dated 9th October, 2003. However, one Gujarat Rajya Shala Sanchalak Mandali filed Special Civil Application No.16257/2003 challenging the legality of said circular dated 9th October, 2003. The said petition however, ultimately came to be withdrawn. Subsequently, yet another school management filed Special Civil Application No.12217/2005 challenging the same circular dated 9th October, 2003. Learned Single Judge of this Court, by order dated 31st January, 2006, did not find any merits in the challenge, however granted certain directions in favour of the petitioners permitting the petitioners to make representation pointing out exceptional circumstances justifying making of departure from the normal selection process granted by the respondents.

10. From the narration of facts it can be seen that before this Court in this group of petitions essentially what is under challenge is the two circulars issued by the Board and State Government respectively providing for certain modalities for making selection of teachers in grant in aid schools.

11. As noted earlier, presently what is in operation is the methodology prescribed by the opponents by circular dated 9th October, 2003. In that view of the matter, substantially the challenge of these petitioners has been diluted and become virtually infructuous. Without therefore, expressing any opinion on the contentions of the the petitioners regarding legality of the act of respondents in providing for a somewhat rigid and straight jacket formula for making selection for teachers, I propose to dispose of this group of petitions by keeping the rights of the petitioners open to seek such legal remedy as may be available to them to challenge the legality of the subsequent circular dated 9th October, 2003 which is in operation currently.

12. Before doing that however, two issues need to be sorted out. Firstly as noted earlier by interim order dated 23rd February, 1995, Learned Single Judge of this Court had permitted the appointments to be made to the teaching staff of

the schools subject to outcome of the petition namely Special Civil Application No.13557/1994. It is stated before the Court that as directed by the learned Judge the appointment orders carry such a condition that such appointments are subject to outcome of the petition. It is nobody's case that such appointments should be reopened at this distant point of time and the selection be reviewed. These teachers have been regularly selected through regular selection process after issuance of advertisements, inviting all eligible candidates to apply and after conducting interviews applying the formula provided by the respondents for assessment of marks under different heads. No useful purpose would be served in unsettling such long settled issues and questioning the appointments of duly selected candidates by duly constituted Selection Committee. Regardless of the grievances of the school managements to retain a degree of discretion in making selection and to insist that at-least a portion of marks should be alloted for performance of the candidates at interview, it is not even the stand of the petitioners-school management that the appointments already made be revoked. In that view of the matter, despite disposal of this group of petitions, there shall be no effect thereof on selections and appointments made under the interim order passed by this Court on 23rd February, 1995 in Special Civil Application

No.13557/1994. Such appointments therefore, shall now be final and not be subject to outcome of the said petition.

13. Another aspect of the matter to be sorted out is with respect to the interim observations made by this Court in Special Civil Application No.4828/2001 on 19th December, 2002 which observations have been reproduced here-in-above,

14. Having heard learned advocates appearing for the parties, I find that some directions in the nature of final directions need to be given along the lines of the said interim observations. Even if the Government or the Board is justified in seeking to limit discretion and thereby possibility of discrimination in selection process, to which issue I refrain from making any final observation, it cannot be gainsaid that in rare cases such rigid formula may lead to palpable injustice. Some flexibility and scope of redressal in such cases is therefore, absolutely essential. For the above purpose, therefore, even while in this group of petitions not disturbing the methodology of selection of teachers in aided schools currently in vogue, it is directed that in a given case if the school management is of the opinion that by application of such selection process, injustice is done to otherwise deserving candidate, it would be

open for the school management to approach the Commissioner of Mid Day Meals and Schools in writing with proper material for not being able to appoint the selected candidate. If such an approach is made expeditiously after the selection process is over, the said authority shall examine the same and dispose of the request of the school management by a speaking order expeditiously before it is insisted that the school management appoints duly selected candidate. This formula is provided to redress glaring injustice and not for abuse in routine manner in every case.

15. With these observations and directions, petitions are disposed of keeping liberty of the petitioners to take appropriate legal steps if so advised to challenge the current policy of selection.

Rule is made absolute to the above limited extent with no costs. The petitions are accordingly disposed of.

(Akil Kureshi,J.)

(raghu)